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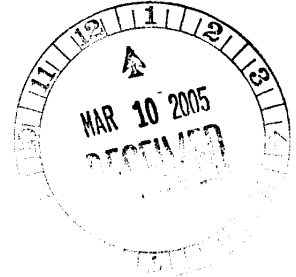
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March 10, 2005

**BY HAND**

Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423-0001

213514



Re: STB Docket No. 42069 *Duke Energy Corporation v. Norfolk Southern Railway Company*; *STB Docket No. 42070, Duke Energy Corp. v. CSX Transportation, Inc.*; and *STB Docket No. 42072, Carolina Power & Light Co. v. Norfolk Southern Railway Co.*

Dear Secretary Williams:

Enclosed for filing on behalf of Defendants Norfolk Southern Railway Company ("NS") and CSX Transportation Inc. ("CSXT") in the above-referenced proceedings are the original and 10 copies of: (i) NS' Reply to Complainant Duke's First Motion to Compel Production of Documents Regarding Phasing in Docket No. 42069 (March 7, 2005); (ii) CSXT's Reply to Complainant Duke's First Motion to Compel Production of Documents in Docket No. 42070 (March 7, 2005); and (iii) NS' Reply to Complainant CP&L's First Motion to Compel Production of Documents Regarding Phasing in Docket No. 42072 (March 7, 2005). Also enclosed are three computer disks, each containing an electronic copy of one of the three Replies.

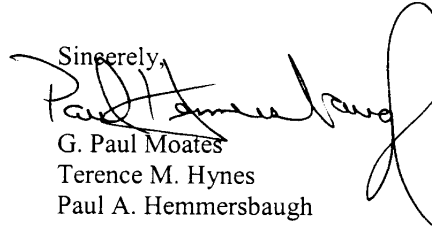
Please acknowledge receipt of these submissions for filing by date-stamping the enclosed duplicate paper copies and returning them with our messenger. If you have any questions concerning this filing, please contact the undersigned.

SIDLEY AUSTIN BROWN & WOOD LLP

WASHINGTON, D.C.

Honorable Vernon A. Williams  
March 10, 2005  
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Thank you for your attention to this matter.

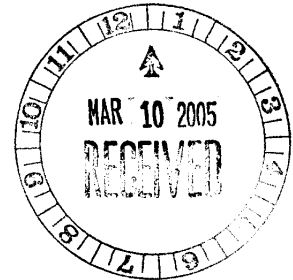
Sincerely,  
  
G. Paul Moates  
Terence M. Hynes  
Paul A. Hemmersbaugh

Enclosures

cc: Counsel for Complainants

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

2/3514



\_\_\_\_\_  
Duke Energy Corporation,, )

Complainant, )

vs. )

Norfolk Southern Railway Company, )

Defendant. )  
\_\_\_\_\_ )

Docket No. 42069

**DEFENDANT NORFOLK SOUTHERN RAILWAY COMPANY'S REPLY TO  
COMPLAINANT'S FIRST MOTION TO COMPEL PRODUCTION OF DOCUMENTS  
IN RESPONSE TO PHASING REQUESTS**

Defendant Norfolk Southern Railway Company ("NS") hereby submits its Reply to Complainant Duke Energy Corporation's ("Duke") First Motion to Compel Production in Response to Phasing Requests ("Motion"). While NS has agreed to produce the contracts that are the subject of Duke's Motion if the Board orders their production<sup>1</sup>, NS submits this brief Reply to emphasize that its transportation contracts with other coal shippers are not relevant to the proper subject matter of a phasing proceeding. NS fully reserves its right to object to the introduction into evidence or other use of those contracts in connection with this phasing proceeding.

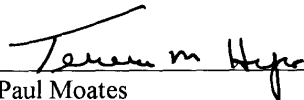
<sup>1</sup> Many of the contracts have confidentiality or non-disclosure provisions that prohibit NS from producing them to a third-party unless ordered to do so by a court or government agency.

NS willingness to produce the subject contracts obviates any need for Duke to obtain access to other materials that would be far more burdensome to produce, extremely sensitive, or both. In particular, Duke has advised NS that it intends to move to compel NS to produce: (i) computerized traffic tapes and car movement records for four additional years, and (ii) revenue masking factors for the Carload Waybill Sample for the years 2001 through 2003. NS maintains that access to its coal transportation contracts and tariffs, in combination with the Carload Waybill Sample data that the Board has made available to Duke, makes it entirely unnecessary for Duke to obtain discovery of additional movement-specific traffic data, revenue masking factors and related materials.

Dated: March 10, 2005

James A. Squires  
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David A. Shelton  
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Respectfully submitted,

  
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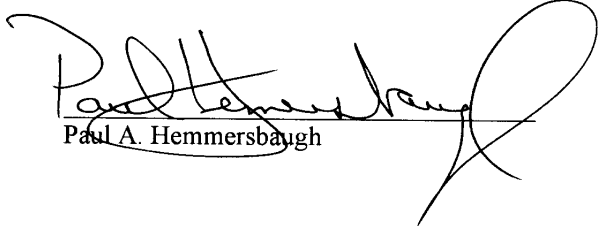
*Counsel to Defendant Norfolk Southern Railway Company*

**CERTIFICATE OF SERVICE**

I certify that, on this 10<sup>th</sup> day of March, 2005, I served the foregoing Reply to  
Complainant's First Motion to Compel Production of Documents in Response to Phasing  
Requests, by causing copies thereof to be delivered to:

C. Michael Loftus  
Slover & Loftus  
1224 Seventeenth Street, N.W.  
Washington, D.C. 20036  
(*hand delivery*)

Paul R. Kinny  
Duke Energy Corporation  
422 S. Church Street  
Charlotte, NC 28202  
(*via FedEx*)



Paul A. Hemmersbaugh